

EXHIBIT “P”

1227

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, : CR 08 655
v. : U.S. Courthouse
CHRISTIAN TARANTINO, : Central Islip, N.Y.
Defendant. : TRANSCRIPT OF TRIAL
April 5, 2011
-----X 10:05 a.m.

BEFORE:

HONORABLE JOANNA SEYBERT, U.S.D.J.
and a jury

APPEARANCES:

For the Government: LORETTA E. LYNCH
United States Attorney
100 Federal Plaza
Central Islip, New York 11722
By: JAMES M. MISKIEWICZ, ESQ.
CARRIE N. CAPWELL, ESQ.
SEAN C. FLYNN, ESQ.
Assistants, U.S. Attorney

For the Defendant: JAMES R. FROCCARO, JR., ESQ.
20 Vanderventer Avenue, Suite 103W
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and
MICHAEL ROSEN, ESQ.
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Court Reporter: HARRY RAPAPORT, C.S.R.
United States District Court
100 Federal Plaza
Central Islip, New York 11722
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Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

Fatato-Cross/Froccaro

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1 circumstances.

2 So, based on that, it is not a memory issue.

3

4 (Whereupon, at this time the following takes
5 place in open court.)

6 THE COURT: The objection is sustained.

7 MS. CAPWELL: Your Honor, I have no further
8 questions.

9 MR. FROCCARO: Judge, I will just take a minute.

10 THE COURT: Sure.

11 (Counsel confer.)

12

13 CROSS-EXAMINATION

14 BY MR. FROCCARO:

15 Q My name is James Froccaro, and I represent
16 Mr. Tarantino. And I will be with you in a moment, all
17 right?

18 A Yes.

19 THE CLERK: Mr. Froccaro, do you need the
20 projector on?

21 MR. FROCCARO: I will in a minute. I may.

22 (Whereupon, at this time there was a pause in
23 the proceedings.)

24 Q Mr. Fatato, if there is a question you don't
25 understand, just ask me and I will rephrase it.

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1 A Yes.

2 Q First of all, would you describe yourself as tall?

3 You are about six foot one, six foot two, sir?

4 A Yes.

5 Q And at about the time of the armored car robbery in

6 1994, you were heavier, you weighed 270 pounds?

7 A 270, 280, yes.

8 Q You also had two dogs at the time; is that correct?

9 A Yes.

10 Q Now, Louis Dorval had a nine millimeter Glock. Did

11 you ever have it in your possession, sir, yes or no?

12 A Yes.

13 Q After you were arrested by the DEA for drug dealing

14 in November of 2003, you made a decision how you wanted to

15 proceed with the case; is that correct?

16 A Correct.

17 Q And the decision you made immediately was to

18 cooperate; is that correct?

19 A Yes.

20 Q Within minutes of the arrest; is that correct?

21 A Yes.

22 Q Because you knew from prior experience that this was

23 a day you could reduce your exposure in jail; is that

24 correct?

25 A In 1993 from prior experience? No.

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1 Q Had you ever made a statement under oath, a prior
2 statement under oath, that the decision you made
3 immediately was to cooperate because you knew from prior
4 experience that this was a way that you could reduce your
5 exposure to jail? Yes or no, sir?

6 A I don't recall.

7 MR. FROCCARO: It is 3500 GS-144, provided at
8 page 669, lines 11 to 21.

9 Q Mr. Fatato, do you recall being asked these questions
10 and giving these answers under oath at a prior proceeding:

11 Question: After you were arrested by the DEA
12 for drug dealing in November of 2003, you made a decision
13 about how you wanted to proceed with the case, correct?

14 Answer: Yes, sir.

15 Question: And the decision you made immediately
16 was to cooperate, correct?

17 Answer: Yes, sir.

18 Question: Because you knew from prior
19 experience that this was a way that you could reduce your
20 exposure to jail, correct?

21 Answer: Yes, sir.

22 Do you recall being asked those questions,
23 giving those answers under oath at a prior proceeding?
24 Yes or no, sir.

25 A Yes, in 2003. You said '93.

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1 Q The answer to my question is right, yes?

2 A In 2003, yes, sir.

3 Q The record will speak for itself.

4 Now, you are testifying here today pursuant to
5 the terms of a written cooperation agreement you had with
6 the government.

7 MR. FROCCARO: I apologize for that, I should
8 have asked the government for that as well, if I can
9 impose on you, Carrie, again.

10 Q You signed the cooperation agreement on the same day
11 that you actually pled guilty to dealing crystal meth on
12 April 14th, 2004; is that correct?

13 A Yes.

14 Q And for the crime you pled guilty to, you are facing
15 a mandatory minimum of ten years in prison; is that
16 correct?

17 A Yes.

18 Q And a maximum of life in prison, correct?

19 A Yes.

20 Q And so the jury understands, life means you are never
21 coming out again; is that right?

22 A Yes.

23 Q And there is no parole in the federal system; is that
24 right?

25 A Yes.

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1 Q Are you married with children?

2 A Yes.

3 Q Now, you cooperated so you can get a 5K1 letter; is
4 that correct?

5 A Yes.

6 Q And you are hopeful the 5K1 letter will reduce the
7 sentence that you ultimately receive; is that correct?

8 A Yes.

9 Q And you are hopeful with the 5K1 letter, it may
10 result in you not doing any jail time at all; is that
11 correct?

12 A Correct.

13 Q Now --

14 A Correct.

15 Q Now, your present cooperation agreement with the
16 government imposes certain obligations on you; is that
17 correct, sir?

18 A Yes.

19 Q And I think you testified you were obligated to at
20 all times provide truthful information to the government.

21 Do you agree?

22 A Yes, sir.

23 Q And you must not commit or attempt to commit any
24 further crimes, right?

25 A Correct. Yes.

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1 Q And you signed that promise that you would do that;
2 is that correct?

3 A Yes.

4 Q Or else the government would rip up your agreement;
5 is that right?

6 A Yes.

7 Q Is that your understanding, Mr. Fatato?

8 A Yes.

9 Q That really isn't your understanding, is it,
10 Mr. Fatato, yes or no?

11 A No, I understand.

12 Q Well, this isn't the first time that you entered into
13 a cooperation agreement with our government; is that
14 correct?

15 A Correct.

16 Q And you were previously indicted in the federal court
17 for the District of New Jersey in August of the year 1994,
18 sir; is that correct?

19 A Yes, sir.

20 Q And charged with racketeering, right?

21 A Yes, sir.

22 Q Consisting of heroine trafficking, distributing
23 stolen fur coats from Filene's Basement and passing
24 counterfeit money; is that correct?

25 A Yes.

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1 Q And Louis Dorval was charged along with you and
2 others in that case?

3 A Correct.

4 Q And how you decided to proceed in that case was to
5 plead guilty and immediately to start cooperating with the
6 government as well; is that correct?

7 A Yes, correct.

8 Q And that is when you first made allegations about
9 Mr. Tarantino to the government; is that right?

10 A Correct.

11 Q In 1994, right?

12 A Correct.

13 Q Since you began cooperating with the government in
14 1994, you don't claim to have spoken with Chris Tarantino
15 ever again; is that right?

16 A Yes.

17 Q Which is more than 15 years ago; is that right?

18 A Yes.

19 MR. FROCCARO: The next number is C?

20 THE CLERK: Yes.

21 MR. FROCCARO: I don't think the government has
22 any objection.

23 Q Mr. Fatato, what do you recognize this document to
24 be?

25 (Handed to the witness.)

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1 A My plea agreement.

2 Q That is your prior cooperation agreement with the
3 government back in 1994; is that correct?

4 A Correct.

5 Q And that is your signature there?

6 A Yes, sir.

7 MR. FROCCARO: I move for the admission, I don't
8 believe they object.

9 THE COURT: No objection. It is in evidence, C
10 as in Charley.

11 (Whereupon, Defendant's Exhibit C was received
12 in evidence.)

13 MR. FROCCARO: Thank you, Judge.

14 Q Mr. Fatato, that is the plea agreement you entered
15 into as a cooperating witness the first time around in
16 New Jersey; is that correct?

17 A Correct.

18 Q To your knowledge Chris Tarantino was never charged
19 with a crime in that case either before or after you began
20 to cooperate; is that correct?

21 A Correct.

22 Q Mr. Fatato, what were the names of the lawyers who
23 assisted you in signing that agreement, or securing that
24 agreement with the government at the time?

25 A Sidney Friedler.

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1 Q And Jeff Schwartz, too; is that right?

2 A Yes, he worked for the law firm, yes.

3 Q And that letter sets forth the full and complete
4 cooperation agreement between you and the government in
5 the District of New Jersey case, as of November 17th,
6 1994; is that correct?

7 A Correct.

8 Q Now, you didn't honor the terms of the cooperation
9 agreement you previously entered into with the government,
10 did you?

11 A No, sir.

12 Q And that cooperation agreement required all the
13 information you provided to the government to be truthful;
14 is that correct?

15 A Yes.

16 MR. FROCCARO: Maybe we will put it on the
17 screen.

18 (Whereupon, at this time there was a pause in
19 the proceedings.)

20 MR. FROCCARO: Judge, I'm getting better with
21 this.

22 Q Mr. Fatato, if you read this portion I pointed out
23 here, that sentence, for the jury out loud, please, of
24 your cooperation obligation.

25 A Guy Fatato shall truthfully disclose all information

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1 concerning all matters about which this office inquires of
2 him.

3 Q Thank you.

4 That obligation required all the information you
5 provided to the government to be truthful; is that
6 correct?

7 A Yes.

8 Q The same requirement as your present cooperation
9 agreement with the government; is that right?

10 A Yes.

11 Q Were you at all times truthful with the government
12 when you were a cooperating witness before, yes or no?

13 A No.

14 Q You know what a debriefing is?

15 A Yes.

16 Q And it is an interview where you basically provide
17 all the information to the government; is that right?

18 A Yes.

19 Q And like drug enforcement agents or FBI agents and
20 Assistant United States agents -- attorneys like
21 Mr. Miskiewicz and Ms. Capwell; is that right?

22 A Yes.

23 Q And you understand, do you not, that the various
24 members of law enforcement who interviewed over the year
25 kept a written reference of the statements you made to

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1 them; is that right?

2 A A summary, yes.

3 Q Have you ever reviewed your reports?

4 A No.

5 Q How do you know they were summaries?

6 A It is a summary of my statement.

7 Q If you never saw them, how do you know it was a
8 verbatim recitation of your statement?

9 A I was told it is a summary.

10 Q Who told you?

11 A The FBI agent.

12 Q And you also understand the notes they took were
13 actually reduced to reports; is that right?

14 A I don't know. I'm not an FBI agent.

15 Q Have you ever made a prior statement under oath that
16 you understood the notes they took were actually reduced
17 to reports, yes or no, sir?

18 A Yes.

19 Q You have?

20 Were you being truthful when you made that
21 statement?

22 A Yes.

23 Q While you were a cooperating witness for the
24 government in New Jersey, you were debriefed or
25 interviewed by the government on a number of occasions; is

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1 that correct?

2 A Yes.

3 Q During those debriefings, the government asked you
4 about the criminal activity that you yourself had
5 personally engaged in in the past; is that correct?

6 A Yes.

7 Q And you were not truthful with the government about
8 all the criminal activities that you personally had
9 engaged in in the past during your debriefings with the
10 Assistant United States Attorneys and FBI agents; is that
11 correct?

12 A Yes.

13 Q You lied to them; is that right?

14 A Yes.

15 Q And you lied to them on numerous occasions; is that
16 correct?

17 A Yes.

18 Q And did you lie to the government during your
19 debriefings about the criminal activity that any of your
20 friends had engaged in when you were previously a
21 cooperating witness? Yes or no.

22 A Yes.

23 Q And during your debriefings or interviews in person
24 with the various FBI agents and Assistant United States
25 attorneys, you looked them right in the eye and you lied

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1 to them; is that right?

2 A Yes.

3 Q You are aware, are you not, that there is a federal
4 crime to lie to a federal agent; is that right?

5 A Yes.

6 Q And you did it anyway while you were a cooperating
7 witness with the government; is that correct?

8 A Yes, I minimized my role.

9 Q The answer to my question is, yes, you knew it was a
10 crime to make a false statement to a federal agent and you
11 did it while you were a cooperating witness; is that
12 correct?

13 A Yes.

14 Q Now, you were arrested twice by our government in
15 1994; is that correct?

16 A Yes.

17 Q In federal court in New Jersey, which we already
18 discussed a little bit, correct?

19 A Yes.

20 Q And in the Southern District of New York, as well,
21 yes?

22 A Yes.

23 Q In White Plains, right?

24 A Yes.

25 Q For possession of stolen bonds; is that right?

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1 A Yes.

2 Q Along with your own father; is that right?

3 A Yes.

4 Q At the same time you were a cooperating witness for
5 the government, you decided to go to trial with respect to
6 the stolen bond charges in New Jersey with your father; is
7 that right?

8 A Yes.

9 Q You both maintained your innocence in front of a
10 judge and jury while you were maintaining your innocence
11 and actually went to trial; is that correct?

12 A Yes.

13 Q And you and your father were found guilty by the
14 jury; is that correct?

15 A Yes.

16 Q You both needed to appeal your convictions to a
17 higher court, to the Court of Appeals; is that correct?

18 A Yes.

19 Q And in reality, you and your father were actually
20 guilty of the crimes you were charged with in federal
21 trial in New Jersey; is that correct?

22 A Yes.

23 Q And how much money in bonds in total did you and your
24 father have?

25 MS. CAPWELL: Objection, your Honor.

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1 THE COURT: How much was the face value of the
2 bond?

3 Q What was the dollar amount of the bonds in total that
4 you suggested?

5 A Close to a million dollars.

6 Q Close to a million?

7 A Yes.

8 Q And have you ever made a prior statement under oath
9 that it was 1.5 million, Mr. Fatato?

10 A I don't recall.

11 Q All right.

12 A There was a lot of money.

13 Q You would know the difference, that you may have
14 forgotten 500,000 that you could have pocketed, right?
15 You know the difference between a million dollars and a
16 million and a half dollars?

17 A Some were from years later so the value was more.
18 Since we didn't cash them, they were probably between
19 eight hundred thousand to a million four.

20 Q Going back to my original question.

21 Did you ever make a prior statement under oath
22 that the value of the bonds in total was 1.5 million
23 dollars, yes or no?

24 A I don't recall.

25 Q All right.

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1 Government Exhibit 3500 GF at page 1483, lines 7
2 to 12 -- I apologize, one minute, there is a lot of stuff
3 all over the place.

4 MS. CAPWELL: Can we see you at the sidebar?

5 THE COURT: Come on up.

6

7 (Whereupon, at this time the following took
8 place at the sidebar.)

9 THE COURT: The portion of the transcript you
10 want to read, is that what you are objecting to?

11 MS. CAPWELL: My concern is that the witness'
12 answer was I don't recall. He wasn't denying it.

13 I would think the proper procedure is that there
14 is something to refresh your recollection, and maybe he
15 will say, yes. I don't think he has to go straight into
16 impeaching him on question, answer, question.

17 MR. FROCCARO: Your Honor, if it is a prior
18 statement of an agent, and I have to refresh his
19 recollection. If it is his statement, I can go into his
20 prior statement under oath whether he doesn't recall it or
21 not.

22 MS. CAPWELL: He is not denying it.

23 THE COURT: I will allow you to finish this
24 question. If he equivocates, you can show him that, and
25 then if he denies it --

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1 MR. FROCCARO: You want me to refresh him?

2 THE COURT: He was particularly uncertain.

3 MR. FROCCARO: Judge, I'm trying to save time.

4 And then he says it doesn't refresh his recollection, and
5 then I will do the same thing we started in the first
6 place.

7 THE COURT: You assume he is not going to say
8 that it doesn't fresh his recollection.

9 MR. FROCCARO: All right.

10

11 (Whereupon, at this time the following takes
12 place in open court.)

13 THE COURT: The objection is sustained.

14 Q Mr. Fatato, I will ask you to review this document
15 and see if it refreshes your recollection that you made a
16 prior statement under oath that the bearer bonds total 1.5
17 million.

18 If you can review from 7 to 12 and read it to
19 yourself and see if it refreshes your recollection that
20 you made the prior statement under oath.

21 (Handed to the witness.)

22 A Yes, sure.

23 Q Does it refresh your recollection that you made that
24 prior statement under oath?

25 A Yes.

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1 Q Thank you.

2 Were you being truthful when you made that prior
3 statement under oath, Mr. Fatato?

4 A Yes.

5 MR. FROCCARO: It will take me a minute to get
6 this thing organized, Judge.

7 (Whereupon, at this time there was a pause in
8 the proceedings.)

9 Q Shortly after your banker began to liquidate the
10 bonds, you were contacted by US Secret Service agents; is
11 that correct?

12 A My dad was, yes.

13 Q And you ultimately got served with a subpoena; is
14 that correct?

15 A Yes.

16 Q And the agents asked you if you were involved with
17 cashing the stolen bonds; is that correct?

18 A Yes.

19 Q And you told them you had not been involved; is that
20 right?

21 A Yes.

22 Q You lied right to their face; is that correct?

23 A Correct.

24 Q In reality, your fingerprints were found on the
25 stolen bonds; is that correct?

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1 A Correct.

2 Q And in truth, Mr. Fatato, to your knowledge, Chris
3 Tarantino's fingerprints were found nowhere on the stolen
4 bonds; is that correct?

5 A Correct.

6 Q What was your defense to the stolen bond charges in
7 the trial in White Plains, especially of the fact that you
8 and your father did it, do you recall what it was?

9 A No, sir.

10 Q Maybe I can help refresh your recollection.

11 During your trial there was a court reporter
12 present who took down everything you said, just like
13 Mr. Rapaport over there; do you agree? Do you recall
14 that?

15 A Yes.

16 Q During that trial did you and your father actually
17 call a Catholic priest named Raymond in your defense to
18 testify about yours and your father's good reputation for
19 honesty and decency in the community? Do you recall that,
20 sir, yes or no?

21 A Yes. My dad called him, yes.

22 Q The answer to that is yes; is that correct?

23 A Yes.

24 Q Now, you recall the defense; is that correct?

25 Did you also call your mother to lie about you

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1 in the -- on the witness stand during the trial?

2 A My mother, no.

3 Q How about your stepmom?

4 A Yes, my stepmother.

5 Q And she lied about it, too, on the witness stand; is
6 that correct?

7 A I don't recall that.

8 Q You don't recall if your mother -- your stepmother
9 perjured herself for you in front a court and jury at a
10 trial?

11 A No.

12 Q Let me ask you this: Before the government signed
13 up -- you up as a cooperating witness, didn't they ask you
14 if you were ever involved in stolen bonds with your
15 father, yes or no?

16 MS. CAPWELL: Objection. Which time.

17 MR. FROCCARO: 1994 is what I'm focusing on
18 right now.

19 THE COURT: All right.

20 Q Didn't they ask you about that?

21 A Yes.

22 Q You lied to them, right? You told them you were not
23 involved; is that right?

24 A No.

25 Q Wait.

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1 You lied to them; is that correct?

2 A I told Joe Sierra I was involved in the bonds,
3 correct. That I recall.

4 Q Before you went to trial before the judge and jury
5 and said you were not guilty, you are saying you told the
6 government that you were involved in the stolen bonds?

7 A Sorry, sir, it was after the trial. Sorry.

8 Q When you were a cooperating witness the first time
9 around, you never told them about it; is that right,
10 before the trial? Correct?

11 A No, sir, we were going to trial.

12 Q And let alone that Chris was also somehow involved
13 with you, correct?

14 A Yes.

15 Q And then for the first time did you make a claim that
16 Chris Tarantino had been a source for these stolen bonds
17 when you found yourself in trouble again and were trying
18 to get a second cooperation agreement in the year 2004; is
19 that correct?

20 A Yes.

21 Q And yesterday you were telling the jury you were
22 asked by Louis Dorval to liquidate these bonds and Chris
23 was involved in stealing them. You recall that, right?

24 A No.

25 Q You don't recall saying that to the jury yesterday?

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1 A I asked Louis to liquidate the bonds? No.

2 Q Maybe I'm going too fast. I will say it again.

3 Yesterday you told this jury that you were asked
4 by Louis Dorval to liquidate these bonds and that Chris
5 had been involved in stealing them? Do you recall telling
6 them that yesterday?

7 A Yes.

8 Q Mr. Fatato, didn't you tell your own father and
9 co-conspirator when you got these stolen bonds many years
10 ago that they had come from someone who owed you, Guy
11 Fatato, money? Yes or no, sir, did you tell that to your
12 father?

13 A I don't recall.

14 Q Well, have you ever made a prior statement under oath
15 that you told that to your father?

16 A I don't recall.

17 Q Okay.

18 I will bring something up to refresh your
19 recollection.

20 Government's Exhibit 3500-GF-86, at pages 1476
21 to 1477.

22 (Handed to the witness.)

23 Q I will ask you to review this document and see if it
24 refreshes your recollection that you made a prior
25 statement under oath that that is what you told your

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1 father.

2 THE COURT: What page is it?

3 MR. FROCCARO: 1476 to 1477, your Honor, lines
4 22 to 11. GS-85, it may be 86.

5 THE COURT: I think it is 86, all right.

6

7 (Whereupon, at this time there was a pause in
8 the proceedings.)

9 Q After reviewing that document, does it refresh your
10 recollection that you made a prior statement under oath
11 that you told your own father and co-conspirator when you
12 got these stolen bonds many years ago, that they had come
13 from someone who had owed you, Guy Fatato, money?

14 A Yes, sir.

15 Q And were you being truthful when you made that
16 statement, then?

17 A Umm, no, sir.

18 Q And you lied to a jury, is that what you are saying?

19 A No. That was the truth. I lied to my dad.

20 Q All right.

21 Where did I leave them?

22 A Sir, you left it up here.

23 Q Thank you, in case I need it again. Thank you.

24 Mr. Fatato, you admitted a few months ago, I
25 think Agent Schelhorn, for the first time since you became

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1 a cooperating witness in 1994 that you had cashed stolen
2 bonds at the same bank before, and for someone else; is
3 that correct?

4 A Yes.

5 Q And that was 16 years after you first became a
6 cooperating witness; is that correct?

7 A Yes.

8 Q And it just came back to you, right?

9 A We were going over the paperwork and it was a long
10 time, and I recall that I cashed ten or fifteen thousand
11 dollars with the bonds. And that is what gave the window
12 for Louis Dorval to ask me that --

13 MR. FROCCARO: Objection, move to strike.

14 THE COURT: The jury is instructed to disregard
15 the last answer.

16 Q Your prior cooperation with the government, like your
17 present one, also provided that you were prohibited from
18 committing further crimes; is that true?

19 A Yes.

20 Q Did you violate this provision in committing new
21 crimes when you were a cooperating witness for our
22 government before, yes or no?

23 A Yes.

24 Q Talking about an individual named Johnnie Long Hair,
25 and I will cover him a little bit, all right?

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1 A Yes.

2 Q Johnnie Long Hair was an individual whom you had
3 given some of the stolen bonds to be cashed; is that
4 correct?

5 A Yes.

6 Q And you went to him at one point and told him that he
7 owed you money for the bonds; is that correct?

8 A Yes.

9 Q And this fellow Johnnie didn't have the money; is
10 that right?

11 A Yes.

12 Q And to hold you off, Johnnie gave you ecstasy pills;
13 is that correct?

14 A Yes.

15 Q You in turn gave the pills to an associate of yours
16 named Bobby Hazel?

17 A Yes.

18 Q And Mr. Hazel sold the pills for you and gave you how
19 much money?

20 A In the 20's, \$20,000.

21 Q And all this took place while you were a cooperating
22 witness for our government; is that correct?

23 A Yes.

24 Q The same thing you are now, correct?

25 A Correct.

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1 Q And were not supposed to be committing any new
2 crimes; is that correct?

3 A Yes.

4 Q And I'm sure you told the government what you were
5 doing with Johnnie Long Hair at the time -- no, right?

6 A Right.

7 Q And you lied about that, too; is that right?

8 A Yes. It never came up.

9 Q And the first time you were a cooperating witness for
10 our government, you also got caught dealing cocaine by the
11 state authorities in Nassau County; do you agree with
12 that, Mr. Fatato?

13 A Yes. It was a conspiracy charge.

14 Q How much cocaine was involved in the conspiracy
15 charge?

16 A I think it was one or two kilos.

17 Q The government ultimately found out about your drug
18 dealing while you were a cooperating witness for them; is
19 that correct?

20 A Yes.

21 Q Because you were arrested for the crime and wound up
22 in a Nassau County Jail; is that right?

23 A No.

24 Q Well, have you ever made a prior statement under oath
25 that they found out about it because you were arrested for

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1 this crime and wound up in a Nassau County jail, yes or
2 no, sir?

3 A I pled guilty later on --

4 Q The answer to the question is yes or no, sir.

5 Did you ever make a prior statement under oath
6 that the government found out about it because you were
7 arrested for this crime and wound up in a Nassau County
8 jail? Yes or no, sir.

9 A I did wind up in jail, yes.

10 Q And that is how the government found out about it,
11 right?

12 A I don't recall.

13 Q I will ask you again: Did you make a prior statement
14 under oath that that is how the government found out about
15 it, yes or no?

16 A I said I don't recall.

17 Q 3500 GF-144, at pages 684 and 685.

18 MR. FROCCARO: It is lines 20 to 1, your Honor.

19 Q Mr. Fatato, I will ask you to review this document
20 and see if it refreshes your recollection that you made
21 that prior statement under oath.

22 (Handed to the witness.)

23 A Yes.

24 Q And after reviewing that, does it refresh your
25 recollection that you made that prior statement under

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1 oath?

2 A Yes, sir.

3 Q Were you being truthful when you made that prior
4 statement under oath?

5 A Yes, sir.

6 Q Now, so we are clear, because it wasn't clear during
7 your direct examination, you didn't tell the government
8 about your involvement in cocaine trafficking before you
9 got arrested by Nassau County; is that correct?

10 A No, sir.

11 Q You were not truthful with them at the time; is that
12 right?

13 A Yes.

14 Q The more -- word more accurately is you lied to them
15 about that as well; is that correct?

16 A Correct.

17 Q And after you got caught dealing cocaine while you
18 were a cooperating witness with the federal government,
19 you then began to cooperate with the state authorities in
20 Nassau County as well; is that correct?

21 A Yes, correct.

22 Q Now --

23 MR. FROCCARO: Judge, may I approach?

24 THE COURT: Yes.

25 Q I have one question before I get there, Mr. Fatato.

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1 You just stated after you got caught dealing,
2 you began to cooperate with the authorities in Nassau
3 County as well; is that correct?

4 A Yes.

5 Q In the hope to get another reduced sentence; is that
6 correct?

7 A Yes.

8 Q And you knew that the authorities in Nassau County
9 were hurting in their investigation into Louis Dorval's
10 murder, so when they hit you with drug charges you told
11 them you could assist them as well as with the FBI?

12 A At the time I was doing it with the FBI.

13 Q Is the answer to that question yes or no, sir? If
14 you don't understand, I will try to rephrase it.

15 A Yes.

16 Q The answer is yes?

17 A Yes.

18 MR. FROCCARO: If I may approach, your Honor?

19 THE COURT: Yes.

20 MR. FROCCARO: Up to D now, your Honor?

21 THE COURT: Yes.

22 (Counsel approaches the witness.)

23 Q Mr. Fatato, do you recognize what that document is,
24 sir?

25 A This is a Nassau County District Attorney's Office

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1 cooperation agreement.

2 Q This is the agreement you signed.

3 What is it dated, sir?

4 A June 9th, 1995.

5 MR. FROCCARO: I move for its admission, Judge.

6 MS. CAPWELL: No objection, your Honor.

7 THE COURT: Received in evidence.

8 (Whereupon, Defendant's Exhibit D was received
9 in evidence.)

10 THE COURT: Perhaps this is a good time to take
11 a break.

12 See you folks in 15 minutes.

13 (Whereupon, at this time the jury leaves the
14 courtroom.)

15
16 (Whereupon, a recess was taken.)

17

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1 THE COURT: Please bring back Mr. Fatato.

2 (Whereupon, the jury at this time entered the
3 courtroom.)

4 THE COURT: Please be seated, if you would.

5 Ladies and gentlemen, before we resume the
6 examination of the witness, I did want to alert you to the
7 fact that the trial, at least in terms of the timing, is
8 proceeding at a reasonable rate. Therefore, April 18th is
9 the beginning of Passover. And I also have the function
10 in the morning of naturalization that I must attend to
11 that new citizens come in, and I made the commitment well
12 in advance of setting up this trial.

13 So we will have off on the 18th of April. You
14 can add that. And we will have the 19th -- you will come
15 in on the 19th and the 20th and the 21st. All right.

16 You can add those dates to your list.

17 (The clerk confers with the Court.)

18 THE COURT: I'm sorry, the 19th also. The 18th
19 is the beginning of Passover, and the 19th is the day that
20 is the most holy of the days of Passover.

21 That will be resolved that way, and you will be
22 back on the 20th and the 21st. I keep the dates in my
23 head and I get them confused, all right.

24 Ready to proceed.

25 MR. FROCCARO: Thank you, your Honor.

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1 Q Now, when we left off, we finished with the Nassau
2 County cooperation agreement.

3 Can you tell me who your attorneys were on that
4 agreement, sir, were they Sidney Friedler and Jeffrey
5 Schwartz again?

6 A Yes, sir.

7 Q Mr. Fatato, I will put on the screen a portion of the
8 agreement.

9 Now, the agreement with Nassau County also
10 provided that it would be broken if you committed any
11 criminal act after you signed it; do you agree?

12 A Correct.

13 (At this time a document was exhibited on
14 courtroom screen.)

15 Q Maybe if you can just read that aloud, the portion
16 where the little blue is, to the end bracket of the little
17 blue, that agreement you signed and promised to comply
18 with.

19 A The defendant understands, however, that he will be
20 in a worse position than his present offer --

21 THE COURT: A little bit louder because you are
22 not using the microphone.

23 THE WITNESS: Hard to see.

24 THE COURT: All right.

25 THE WITNESS: The defendant understands,

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1 however, that he will be in a worse position than his
2 present offer if the chief of the -- he will be in worse
3 than -- with this agreement in effect.

4 Q In essence it says the same thing as your present
5 agreement and your prior agreement in New Jersey; is that
6 correct?

7 A Yes, correct.

8 Q Now, did you honor the terms of that cooperation
9 agreement, yes or no, sir?

10 A No, sir.

11 Q No, right?

12 A Right.

13 Q And did you tell them before you got sentenced that
14 you lied and not honored the terms of that agreement?

15 A No, sir.

16 Q So you defrauded those prosecutors and that judge; is
17 that correct?

18 A Yes, sir, it is a lie, yes.

19 Q You agreed when you were a cooperating witness for
20 the government the first time around you lied for them?

21 A Yes, I --

22 Q You lied to them, right?

23 A Yes.

24 Q When you were a cooperating witness for the
25 government before, you also engaged in very serious

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1 criminal conduct; is that right?

2 A Yes.

3 Q And the first cooperation agreement you entered into
4 with an agreement specifically stated that if you lied or
5 committed any new federal, state or local crime, the
6 agreement would be declared null and void.

7 Do you agree, Mr. Fatato?

8 A Yes.

9 Q The same thing your cooperation agreement says now;
10 is that right?

11 A Correct.

12 Q After you got caught lying and dealing in cocaine in
13 Nassau County, the government, of course, ripped up your
14 agreement, right?

15 A No, sir.

16 Q The government didn't tear up your agreement?

17 A No, sir.

18 Q Instead of ripping up your agreement, the government
19 entered into a supplement to your cooperation agreement
20 with you; is that right?

21 A Correct.

22 MR. FROCCARO: May I approach again, your Honor?

23 THE COURT: Yes.

24 MR. FROCCARO: I'm up to E, your Honor?

25 THE COURT: Yes.

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1 (Counsel approaches the witness stand.)

2 Q Mr. Fatato, you recognize that document?

3 A Yes.

4 Q That is your supplementary agreement with the
5 government while you were cooperating with them; is that
6 right?

7 A Correct, in '93 --

8 Q After they found out you're lying and dealing in
9 cocaine; is that right?

10 A Yes.

11 MR. FROCCARO: Judge, I move for its admission.

12 THE COURT: No objection?

13 MS. CAPWELL: No objection.

14 THE COURT: It is received in evidence.

15 (Whereupon, Defendant's Exhibit E was received
16 in evidence.)

17 Q Now, the date of this agreement, Mr. Fatato, is
18 June 9, 1995; do you agree?

19 A Yes.

20 (At this time a document was exhibited on
21 courtroom screen.)

22 Q Now, the reason why our government entered into this
23 supplementary agreement with you, because you advised them
24 that you, Guy Fatato, wanted your cooperation agreement to
25 remain in full force and effect; is that right?

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1 A Yes.

2 Q And, in fact, that is what it says right in the
3 agreement itself; is that right?

4 A Oh, yes.

5 Q And the lawyer who represented you in connection with
6 that agreement was Sidney Friedler again; is that correct?

7 A Yes.

8 Q And after you entered into that supplemental
9 cooperation agreement with the government, there came a
10 point in time you were ready to be sentenced in connection
11 with your federal case in New Jersey; is that right?

12 A Correct.

13 Q On May 16th, 1996; is that correct?

14 A Yes.

15 Q As a cooperating witness with our government; is that
16 right?

17 A Yes.

18 Q For a United States District Court Judge, like Judge
19 Seybert, named Alfred Lechner, L-E-C-H-N-E-R; is that
20 correct?

21 A Yes.

22 Q Prior to your sentencing as a cooperating witness for
23 our government, did you pay \$50,000 in cash to your then
24 lawyer, Mr. Friedler, with the understanding that these
25 monies would be used to bribe an Assistant United States

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1 Attorneys or the United States District Court Judge in
2 New Jersey who was going to sentence you, yes or no, sir?

3 A Yes.

4 Q Why did you pay \$50,000 to bribe an Assistant United
5 States Attorney or a United States District Court Judge
6 while you were cooperating for our government before?

7 MS. CAPWELL: Objection, your Honor.

8 THE COURT: Overruled.

9 Q Why?

10 A My attorney told me at the time my time would run
11 concurrent. He said he needs \$50,000, I gave him \$50,000,
12 and I proceeded to go to jail, and at that time nothing
13 ran concurrent and --

14 Q As I understand correctly, it was your attorney, not
15 you, it wasn't your intention to bribe the prosecutor or
16 the United States Attorney?

17 A My attorney brought it to my attention. I'm just as
18 guilty as he was. But I did pay him and I did go to jail,
19 and it didn't --

20 Q It is funny, Mr. Fatato, did you ever make a prior
21 statement under oath that you have no explanation for why
22 you paid 50,000 in cash to bribe an Assistant United
23 States Attorney or a United States District Court Judge?
24 Did you ever make a prior statement under oath? You have
25 no explanation for it?

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1 A It is the --

2 Q Is the answer to that question yes or no?

3 A Yes.

4 Q Were you being truthful when you made that statement?

5 A Yes.

6 Q You were willing to bribe an Assistant United States
7 Attorney or a federal judge while you were a cooperating
8 witness so you would spend less time in jail, right?

9 A Yes.

10 Q Again, what you are now is a cooperating witness; is
11 that right?

12 A Yes, correct.

13 Q You know what a 5K1 letter is, don't you?

14 A Yes, sir.

15 Q What is your understanding of what a 5K1 letter is?

16 A A 5K letter is a letter that is brought to the judge,
17 the sentencing judge, made by the prosecutor, of all the
18 cooperation I have done. And upon that the judge can --
19 if there are mandatory minimums, he can go below that.

20 Q What is your understanding of what you have to do to
21 get one, Mr. Fatato?

22 A Cooperate.

23 Q What about telling the truth, not committing any more
24 crimes, being a substantial assistance to law enforcement,
25 what about those things?

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1 A Yes.

2 Q Did the government file a 5K1 letter on your behalf
3 with the judge that sentenced you in federal court in
4 New Jersey, Judge Lechner? Yes or no.

5 A Yes, sir.

6 Q You didn't mention to the FBI agents while you were a
7 cooperating witness, among other things, that you paid
8 your lawyer 50,000 in cash with the understanding that
9 this money was going to be used to bribe an Assistant
10 United States Attorney or the judge that was assigned to
11 your case, did you, Mr. Fatato?

12 A No.

13 I told them --

14 Q The answer is no, right?

15 A No.

16 Q And when you told them after the fact, how many years
17 after the fact did you tell them?

18 A I think 2003, 2004 time period.

19 Q And the statute of limitations for that time is five
20 years, did you tell them more than five years after the
21 statute of limitations ran?

22 A I said I told them in 2003, 2004.

23 Q Why don't you explain to the jury what the statute of
24 limitations is.

25 MS. CAPWELL: Objection, your Honor.

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1 THE COURT: Sustained.

2 Q Your understanding of what a statute of limitations
3 is.

4 MS. CAPWELL: Objection.

5 THE COURT: I will allow him to respond as to
6 his understanding. But this does not mean that what the
7 witness is testifying to is the correct law. I will give
8 them the law.

9 MR. FROCCARO: Thank you, your Honor, I will
10 lead him.

11 Q Mr. Fatato, you heard about the statute of
12 limitations; is that correct?

13 A Yes.

14 Q For certain times after a certain time period has
15 gone by, you can't ever be charged for the crime again,
16 correct? That is the statute of limitations?

17 A Yes.

18 Q Okay.

19 Now, the government didn't know you paid this
20 50,000 bribe before you got sentenced?

21 A No, sir.

22 Q You duped them?

23 A I just gave the money to my attorney.

24 Q You duped the government, you didn't tell them that
25 you were looking to bribe a prosecutor or the judge before

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1 you were sentenced, right?

2 A If you word it that way, correct.

3 Q And this is all going on at the same time that you
4 are making allegations against Christian Tarantino; is
5 that correct?

6 A Yes.

7 Q I guess it is really your understanding that you
8 don't have to tell the truth and you can commit crimes in
9 order to get a 5K1 letter; is that right?

10 MS. CAPWELL: Objection, your Honor.

11 THE COURT: Sustained.

12 Q Did you say anything to the federal court judge in
13 New Jersey that you planned to bribe in open court before
14 he sentenced you; is that right?

15 A No, sir.

16 Q Okay.

17 That is not true, Mr. Fatato, is it?

18 A I don't recall.

19 Q Now you don't recall, huh?

20 When you were sentenced there was a court
21 reporter --

22 MS. CAPWELL: Objection as to the earlier
23 question, just as to more explanation. It was very vague.

24 MR. FROCCARO: Vague about whether --

25 THE COURT: Please, no disputes between you and

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1 Ms. Capwell.

2 MR. FROCCARO: Sorry, your Honor.

3 THE COURT: Withdraw the question.

4 MR. FROCCARO: I don't know what the question
5 was. What was the question? I don't remember.

6 THE COURT: You were referring to a statement --

7 MR. FROCCARO: I asked him whether he said
8 anything to the Federal District Court judge in New Jersey
9 he planned to bribe in open court before he sentenced him.

10 He said, no.

11 Then I asked him, that is not true, is it?

12 He said he doesn't recall.

13 That is my understanding of what went on.

14 THE COURT: You are saying you don't recall
15 whether you made a statement to your judge at the time of
16 sentence?

17 MR. FROCCARO: It is not true, judge. He said
18 he didn't recall if he lied when he made this statement
19 that he never made a statement.

20 THE COURT: Come on up.

21 MR. FROCCARO: I will get right to it, Judge.

22 THE COURT: All right.

23 Q Mr. Fatato, when you were sentenced there was a court
24 reporter who took down everything that was said. Do you
25 remember that?

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1 A Yes.

2 Q Just like here today; is that right?

3 A Yes.

4 Q Mr. Fatato, what you told the judge, at the same time
5 you had given your lawyers \$50,000 to bribe him and the
6 prosecutor, is, and I quote: I take full responsibility
7 for my actions toward the crime I commit. I would like to
8 repay society one day when I'm released.

9 Do you recall saying that to Judge Lechner, yes
10 or no, Mr. Fatato?

11 A Yes.

12 Q Now you recall saying that?

13 A I don't recall until you read it. It was a long time
14 ago.

15 Q Have you no decency, sir?

16 MS. CAPWELL: Objection, your Honor.

17 THE COURT: The jury is instructed to disregard
18 that.

19 Please do not engage in that kind of colloquy.

20 Q How about your corrupt lawyer when you gave him
21 \$50,000 to bribe the judge or the prosecutor, do you
22 recall what he said to you during the sentencing before
23 Judge Lechner?

24 A No, sir.

25 Q Didn't he tell the judge that you fully accept

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1 responsibility for your actions, that you realize what you
2 had done had hurt society as a whole, and begged Judge
3 Lechner on your behalf for the opportunity to move into
4 the next step of you being truly rehabilitated? Do you
5 recall him saying that on your behalf, Mr. Fatato, yes or
6 no?

7 A I don't recall. It was a long time ago, but --

8 Q But --

9 A I don't remember.

10 Q If you like something to refresh, I will approach
11 you.

12 A If it was said.

13 Q Let me approach you.

14 THE COURT: You can show him.

15 Q I will ask you to review this and see if it refreshes
16 your recollection if that is in sum and substance that
17 your judge -- your lawyer said to the judge during your
18 sentencing proceeding at that time.

19 (Handed to the witness.)

20 Q After reading that, does it refresh your recollection
21 that that is what your lawyer said to the judge at the
22 time?

23 A Yes, sir, that is what my attorney said.

24 Q Now, the next step in your rehabilitation was your
25 perjury before a federal grand jury, which we will get to

Fatato-Cross/Froccaro

1300

1 shortly. First I have a few more questions about your
2 sentencing, okay, Mr. Fatato?

3 A Sure.

4 Q If I understand you correctly, during your direct
5 examination you testified that you do not know what
6 happened to the 50,000 in cash that you paid to your
7 lawyer to bribe an Assistant United States Attorney or a
8 federal Judge while you were a cooperating witness before;
9 is that right?

10 A Yes, sir.

11 Q And you never asked your lawyer what happened to the
12 50,000 in cash you gave him to bribe these government
13 officials?

14 A No, sir.

15 Q Before the 5K letter you received from the
16 government, you wound up receiving a benefit at your
17 sentencing in New Jersey; is that right?

18 A Yes.

19 Q You got a break from the judge, right?

20 A Yes.

21 Q Based upon the 5K1 letter filed by the government in
22 your behalf, the judge granted you a downward departure;
23 is that right?

24 A Correct.

25 Q The judge gave you 33 months in federal prison; is

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1 that correct?

2 A Correct.

3 Q When he could have given you at least six or seven
4 years in prison; is that correct?

5 A Yes.

6 Q Shortly after you went to prison to serve the reduced
7 sentence, you were called by our government to testify
8 before a federal grand jury in New Jersey; is that
9 correct?

10 A Yes.

11 Q And that was in July of the year 1996; is that
12 correct?

13 A Yes.

14 Q Just a few weeks after you were sentenced by Judge
15 Lechner; is that right?

16 A Yes.

17 Q And told him you were right on the road to
18 rehabilitation and repaying the debt to society; is that
19 correct?

20 A Correct.

21 Q The cooperation agreement you signed with the
22 government in New Jersey specifically stated, Guy Fatato
23 shall truthfully disclose all information concerning all
24 matters about which this office requires of him, and
25 truthfully testify in the grand jury as to any subject

Fatato-Cross/Froccaro

1302

1 about which he is questioned.

2 Do you agree that that is what it says,

3 Mr. Fatato?

4 A Yes.

5 Q And when you appeared before the grand jury, it was
6 pursuant to the cooperation agreement you entered into
7 with our government; is that right?

8 A Yes.

9 Q And when you got called to testify before the grand
10 jury in 1996, it was to testify about two homicides; is
11 that right?

12 A Correct.

13 Q The murder of the armored car driver, Mr. Baumgardt,
14 and the murder of Louis Dorval; is that right?

15 A Yes.

16 Q And you are aware, are you not, that during your
17 testimony before the grand jury, there was a court
18 reporter there who took down, again, everything you said;
19 is that right?

20 A Correct.

21 Q You were represented by legal counsel in connection
22 with your testimony under oath before the grand jury. You
23 recall that, don't you, Mr. Fatato?

24 A Yes.

25 Q By the same law firm that represented you in

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1303

1 connection with your sentencing in federal court, the law
2 firm of Sidney Friedler and Jeff Schwartz; is that
3 correct?

4 A Correct.

5 Q The same law firm you give 50 (sic) in cash to bribe
6 the judge and the prosecutors; is that correct?

7 A Yes.

8 Q And by that time it is your sworn testimony before
9 this jury that you still claim to never have asked your
10 lawyers what happened to the 50,000 in bribe money you
11 gave them?

12 A I gave the money to Sidney Friedler who owned the law
13 firm.

14 Q I asked you if you ever asked them at that time what
15 happened to the 50,000 that you gave in cash.

16 A No, Sidney Friedler never -- disappeared.

17 Q Yes or no?

18 A Yes.

19 Q He disappeared?

20 A Yes. He got arrested.

21 Q He disappeared?

22 A Yes.

23 Q When you appeared before the grand jury, you swore to
24 tell the truth, the whole truth and nothing but the truth,
25 so help you God; is that right?

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1304

1 A Yes.

2 Q The same oath you took before this jury; is that
3 correct?

4 A Yes.

5 Q When you testified before the grand jury, you didn't
6 tell the truth, right?

7 A I minimized my role.

8 Q Is the answer you didn't tell the truth before the
9 grand jury?

10 A I minimized my role.

11 Q Okay.

12 Have you ever made a prior statement under oath
13 that when you testified before the grand jury, you did not
14 tell the truth, yes or no?

15 A Yes.

16 Q Were you being truthful when you made that statement?

17 A Yes.

18 Q You lied in the grand jury about a number of things,
19 is that correct?

20 A Correct.

21 Q You committed a federal crime and you committed
22 perjury; is that correct?

23 A Yes.

24 Q You perjured yourself more than once before a federal
25 grand jury investigating the murders of the armored car

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1305

1 driver and Mr. Dorval; is that right?

2 A Yes.

3 Q And when you were called to testify before the grand
4 jurors, you lied under oath to them about your friend's
5 role in certain crimes, didn't you, Mr. Fatato? Yes or
6 no.

7 A Yes.

8 Q And you lied to the grand jury about the criminal
9 histories of others; is that correct?

10 A I don't recall that.

11 Q Well, have you ever made a prior statement under oath
12 that you lied to the grand jurors about the criminal
13 histories of others, yes or no?

14 A I don't recall about criminal histories.

15 Q 3500 GF-144, page 699.

16 MR. FROCCARO: That is for your Honor and the
17 government.

18 Q By the way, you said Mr. Friedler disappeared, and he
19 had a partner there, Mr. Schwartz; is that right?

20 A Excuse me?

21 Q You said Mr. Friedler disappeared, he had a
22 partner --

23 A He just worked for the law firm, Schwartz.

24 Q The name of the law firm was Friedler & Schwartz, and
25 he wasn't a partner?

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1306

1 A I don't recall. But just -- but just that Jeff
2 worked there.

3 Q 699, lines 5 and -- to 12.

4 I will ask you to review that and see if it
5 refreshes your recollection that you made that prior
6 statement under oath.

7 (Handed to the witness.)

8 A Yes, I lied under oath to the grand jurors about --
9 MR. FROCCARO: I will move to admit it then.

10 Q Do you recall being asked this question and giving
11 this answer under oath at the prior proceeding:

12 Question: And you lied to the grand jurors
13 about the criminal history of others, correct?

14 Answer: Could you rephrase that, I don't --
15 And then the court reporter read back the
16 question.

17 You said the answer was correct.

18 Do you recall being asked those questions and
19 giving that answer under oath at a prior proceeding, yes
20 or no?

21 A Yes. But it is different from what you asked me.

22 MR. FROCCARO: Does the government want to
23 stipulate I'm reading it right, your Honor?

24 MS. CAPWELL: Yes.

25 THE COURT: It is as reported.

Fatato-Cross/Froccaro

1307

1 Q Were you being truthful when you made that statement
2 under oath?

3 A Yes.

4 Q So you lied to the grand jurors about the criminal
5 history of others; is that correct? That is what we just
6 went through?

7 A On the paper I just read, it said criminal histories
8 about myself. It didn't say others.

9 MR. FROCCARO: The record speaks for itself.

10 THE COURT: Just move on.

11 Q You also lied under oath to the grand jurors about
12 your own criminal history in response to questions posed
13 by an Assistant United States Attorney; is that correct?

14 A Correct.

15 Q Now, when you testified under oath before the grand
16 jurors, did you, Guy Fatato, falsely accuse other people
17 of crimes that you yourself had committed, yes or no?

18 A I minimized my role.

19 Q Is the answer to that yes or no, sir?

20 Did you falsely accuse other people of crimes
21 you yourself had committed, yes or no?

22 A Yes.

23 Q Would you describe yourself as having had very little
24 experience in narcotics transactions prior to your
25 appearance before the grand jury in New Jersey? No,

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1308

1 right?

2 MS. CAPWELL: Objection, your Honor -- objection
3 as to the form of the question.

4 THE COURT: Let me hear that question again,
5 Harry.

6 (Whereupon, the court reporter reads the
7 requested material.)

8 THE COURT: Can you answer that?

9 THE WITNESS: Yes, I lied. I did have --

10 Q But you didn't have very little experience prior to
11 appearing before the grand jury; is that right?

12 A Yes.

13 Q And you were specifically asked by an Assistant
14 United States Attorney in the grand jury whether you
15 yourself had any previous experience in narcotics
16 transactions, weren't you, Mr. Fatato?

17 A Yes, sir.

18 Q All right.

19 And you swore under oath to the grand jurors in
20 response to that question that you had very little
21 experience in narcotics transactions; is that right?

22 A Correct.

23 Q And you told the grand jurors that you had very
24 little experience in terms of the quantity of narcotics
25 you had previously been involved in, and you told the

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1 jurors that you had very little experience in terms of the
2 amount of times that you had previously engaged in
3 narcotics transactions as well? Do you agree with that,
4 Mr. Fatato?

5 A Yes.

6 Q All lies, right, Mr. Fatato?

7 A Correct.

8 Q You had been dealing in cocaine regularly; is that
9 right?

10 A Yes.

11 Q And had been receiving as much as ten kilos of
12 cocaine a month in the early 90's; is that correct?

13 A Correct.

14 Q And from your cocaine supplier during this time
15 frame, a man named George Mejia; is that right?

16 A Yes.

17 Q And I apologize --

18 MR. FROCCARO: Do you have
19 Government's Exhibit GF-1, please.

20 Thank you.

21 I will put it on the screen.

22 (At this time a document was exhibited on
23 courtroom screen.)

24 Q That is hard to see, but that is this fellow with his
25 arm around you over here, that is this fellow?

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1 A Yes, sir.

2 Q Thank you.

3 Now, you made more than a half a million dollars
4 just from dealing in cocaine alone in the early 90's,
5 didn't you, Mr. Fatato?

6 A Correct.

7 Q During the grand jury experience, you were asked
8 questions about the assistant -- by the Assistant United
9 States Attorney about who is Louis Dorval's regular
10 cocaine supplier; do you recall that?

11 A Yes.

12 Q You swore under oath to the grand jurors a man named
13 Hugo had been Louis Dorval's regular cocaine supplier; is
14 that correct?

15 A Yes.

16 Q And you told the grand jurors that this man, Hugo,
17 had been personally supplying Louis Dorval with as much as
18 a kilo of coke a week; is that right?

19 A Yes.

20 Q All lies again; is that right?

21 A Yes. I said --

22 Q All lies?

23 A Yes.

24 Q And Louis Dorval's regular cocaine supplier prior to
25 his death was you; is that right?

Fatato-Cross/Froccaro

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1 A Yes.

2 Q In fact, Louis was your best customer; is that
3 correct?

4 A Yes.

5 Q By the way, do you have a last name for this person,
6 Hugo?

7 A No, I don't.

8 Q Now, by the time of your appearance in the grand jury
9 in 1996, what were the specific drug transactions that you
10 told the government that you personally participated in?
11 You don't recall, right?

12 A Prior to 1996, sir?

13 Q Yes, by the time of your grand jury appearance in
14 1996. What was the specific drug transactions that you
15 told the government you personally participated in?

16 A Very little.

17 Q You never said you were involved in a cocaine or pot
18 transaction with Chris Tarantino, right?

19 A No, sir.

20 Q When for the first time did you make those
21 allegations? In or about the year 2004 when you found
22 yourself in big trouble with the law again, right?

23 A Yes.

24 Q When you were facing a potential life sentence,
25 right?

Fatato-Cross/Froccaro

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1 A Yes.

2 Q Now, Mr. Fatato, you testified in direct examination
3 that you participated in the robbery of a drug stash house
4 allegedly with Louis Dorval, Mr. Tarantino, and a man
5 named Fabio. You recall that testimony, don't you?

6 A Yes.

7 Q And you now claim to have personally participated in
8 that robbery; is that correct?

9 A Yes.

10 Q And during your appearance before the grand jury, not
11 just -- weren't you specifically asked by an Assistant
12 United States Attorney whether you had participated in
13 that robbery? Yes or no.

14 A Yes. I said a lie.

15 Q Yes, right?

16 A Yes.

17 Q And in response to that question, you said that you
18 had been invited to participate, but that you had declined
19 because you, Guy Fatato, were unwilling to rob another
20 human being? Isn't that what you said under oath to the
21 grand jurors, Mr. Fatato?

22 A Yes. And I said I lied, yes.

23 Q And I believe your exact words to the grand jurors on
24 this subject was as follows: I'm not a stick-up man, I'm
25 not, I'm just not. Certain things I would do and won't

Fatato-Cross/Froccaro

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1 do. One of them is rob people.

2 Isn't that what you said under oath, Mr. Fatato,
3 yes or no?

4 A Yes.

5 Q All lies again; is that right?

6 A I said I lied, yes.

7 Q And you lied because Louis Dorval was dead and not in
8 a position to contradict what you were saying; is that
9 correct?

10 A Yes.

11 Q Can you provide us or the jury with the name of any
12 person that was robbed at this stash house? No, right?

13 A No, I didn't know the people at the stash house, no.

14 Q No names, right?

15 What about this fellow Fabio, can you give us a
16 last name for him?

17 A No.

18 Q And, of course, this person, Fabio, has vanished
19 right?

20 When is the last time you claim to have seen
21 this person that you claim exists named Fabio?

22 A I don't recall.

23 Q Not in 17 years, right?

24 A No. I wasn't best friends with him.

25 Q That is what you claim, you haven't seen him in 17

Fatato-Cross/Froccaro

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1 years; is that right?

2 A Correct.

3 Q And you told other lies to the grand jurors after you
4 swore to them and looked them in the face and told them
5 you were telling the truth, the whole truth, and nothing
6 but the truth, right?

7 A Yes.

8 Q And the scheme to deal in counterfeit bills that you
9 were charged with in federal court and New Jersey, you
10 swore to the grand jurors that your dead friend, Louis
11 Dorval, had been the source for those counterfeit bills;
12 is that correct?

13 A Yes.

14 Q A lie again; is that right?

15 A Yes.

16 Q In truth, you were the source for the counterfeit
17 bills that were being sold to the government informant in
18 that case, right, Mr. Sabol, right?

19 A Yes.

20 Q And during the same grand jury proceeding, you were
21 asked who Louis, who we already know was a lie, had gotten
22 these counterfeit bills from, do you recall that,
23 Mr. Fatato?

24 A Yes.

25 Q And you swore under oath to the grand jurors that you

Fatato-Cross/Froccaro

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1 didn't know where the counterfeit bills had come from; is
2 that right?

3 A Yes.

4 Q A lie again, right?

5 A Yes.

6 Q In truth, where did Louis Dorval get the counterfeit
7 money from? He got it from you, right?

8 A Correct.

9 Q All right.

10 You also knew where the counterfeit bills had
11 come from, right?

12 A Yes.

13 Q From who?

14 A Hugo.

15 Q Now, with Louis Dorval dead, you can basically make
16 up any story you want about what he may have told you,
17 done or proposed to do, right, Mr. Fatato?

18 MS. CAPWELL: Objection, your Honor.

19 THE COURT: Sustained.

20 Q Well, just let's focus now on the proposed or
21 possible crimes that you now claim to have discussed with
22 Louis Dorval while he was alive, okay?

23 A Yes.

24 Q And how about the proposed robbery of a jewelry store
25 in Garden City you testified about yesterday? It never

Fatato-Cross/Froccaro

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1 occurred, right?

2 A To my knowledge, correct.

3 Q Okay.

4 How about the proposed robbery of a stockbroker
5 in Manhattan, you also testified about that yesterday?
6 Also never occurred, right?

7 A From my knowledge, correct.

8 Q But, of course, you hope all these allegations would
9 help you get a reduced sentence at the end of the day,
10 correct?

11 A It is to tell the truth for what happened.

12 Q I know your propensity to tell the truth.

13 MS. CAPWELL: Objection.

14 THE COURT: No comments. Just ask questions.

15 Q Mr. Fatato, while you were a cooperating witness for
16 our government in New Jersey, including your testimony
17 before the grand jury, you never told the government about
18 your cocaine supplier named George Mejia; is that correct?

19 MS. CAPWELL: Asked and answered.

20 THE COURT: Overruled.

21 Q You never told him about the cocaine supplier, did
22 you?

23 A No.

24 Q You lied under oath during your briefings and under
25 oath before the grand jury -- excuse me, withdrawn.

Fatato-Cross/Froccaro

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1 You lied during your debriefings with the
2 Assistant United States Attorneys, and the FBI agents, and
3 you lied under oath before the grand jury to protect
4 George Mejia, right?

5 A Yes.

6 Q And that was because George Mejia in this picture
7 here --

8 (At this time a document was exhibited on
9 courtroom screen.)

10 Q The fellow that has his arm around you, all right,
11 was a good friend of yours, right?

12 A Yes.

13 Q And when you previously lied under oath about your
14 own involvement in certain crimes, you did it so you
15 wouldn't get in deeper trouble yourself. Do you agree?

16 A Correct.

17 Q Didn't the Assistant United States Attorney who
18 questioned you in the grand jury specifically warn you
19 after you swore to tell the truth, and I'm quoting, if you
20 at any time did not tell the truth, or intentionally lied,
21 or misled the grand jury as to anything being asked of
22 you, it would be a violation of federal law relating to
23 obstruction of justice and perjury, and you would be
24 subjecting yourself to prosecution for those offenses in
25 jail?

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1 Do you recall an Assistant United States
2 Attorney explaining that to you before you testified
3 pursuant to your cooperation agreement, yes or no?

4 A Yes.

5 Q And you said you understood those warnings; is that
6 correct?

7 A Yes.

8 Q And you looked the jurors in the face and you lied to
9 them anyway; is that correct?

10 A Yes.

11 Q When did you first indicate to the government around
12 the year 2004 that you had perjured yourself -- you said
13 that before; is that correct?

14 A Yes, I told them, yes.

15 Q Before then had anyone from the government ever
16 challenged any of the information you provided to the
17 grand jury under oath as not having been truthful or
18 accurate, yes or no, Mr. Fatato?

19 A Not to my knowledge. I don't know.

20 Q You had them all fooled, right?

21 MS. CAPWELL: Objection, your Honor.

22 THE COURT: Sustained.

23 Q They didn't know about all the lies you told them; is
24 that correct?

25 A Correct.

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1 Q Since you entered into your present or second
2 cooperation agreement, has any representative of the
3 government ever challenged any of the information you have
4 been providing as not being truthful or accurate? No,
5 right?

6 A I don't know.

7 Q You don't know?

8 Did anybody ever accuse you of lying in this
9 case?

10 A They are investigating work, and they never told me,
11 no.

12 Q The answer to that question is no one ever accused
13 you of lying; is that correct?

14 A Right.

15 Q And you claimed during your direct examination that
16 the heroin sample that was ultimately provided to an
17 informant named Richard Sabol, in connection with your
18 prior federal case in New Jersey, came from the robbery of
19 the heroin stash house; is that correct?

20 A Correct.

21 Q Mr. Fatato, shortly before entering into your current
22 cooperation agreement with the government, didn't you tell
23 the government that you received this heroin sample from
24 your drug supplier, George Mejia, and not the robbery of
25 the stash house? Yes or no, sir.

Fatato-Cross/Froccaro

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1 A No.

2 Q Okay.

3 Would you like something to refresh your
4 recollection about that?

5 A They --

6 MS. CAPWELL: Objection, your Honor.

7 THE COURT: Objection sustained.

8 Q Isn't that what you told an Assistant United States
9 Attorney named Colleen Cavanaugh and a DEA agent named
10 Gagney during an interview you had with them in December
11 of 2003? Do you recall saying that to them, yes or no?

12 A I recall telling them I asked Georgy for heroin.

13 MR. FROCCARO: May I approach, Judge, to see if
14 it refreshes his recollection?

15 THE COURT: Yes.

16 MR. FROCCARO: 3500-GS-17, at page 4.

17 (Counsel approaches the witness stand.)

18 Q I will ask you to review this and see if it refreshes
19 your recollection that you told that assistant and that
20 agent that Richie wants heroin, George gives Guy sample
21 who gives it to Jerry and Jimmy, who give it to Richie.

22 Please read that and see if it refreshes your
23 recollection that that is what you told them during your
24 interview.

25 A No. Don't remember telling them that. I told them

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1 that I asked Georgy for a sample of the Pakistani heroin.

2 Q So it doesn't refresh your recollection?

3 A No.

4 Q During your direct examination you made a number of
5 allegations against Mr. Tarantino, you agree?

6 A Yes.

7 Q About events that you claim took place more than 15
8 years ago; is that right?

9 A Yes.

10 Q And you alleged during your direct examination that
11 you engaged in a number of crimes with Mr. Tarantino and
12 Louis Dorval; yes?

13 A Correct.

14 Q And discussions about proposed or contemplated crimes
15 with Mr. Tarantino and Louis Dorval as well; is that
16 correct?

17 A Correct.

18 Q That information isn't accurate, is it?

19 A No. It is accurate.

20 Q During one of your first interviews with the
21 government back in September of 1994, didn't you tell the
22 FBI that you only met Chris Tarantino on two or three
23 occasions with Mr. Dorval? Yes or no, Mr. Fatato.

24 A I don't recall. I only met him a couple of times.

25 Q I will give you something to refresh your

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1 recollection.

2 MR. FROCCARO: 3500 GF-144, page 715 to 716,
3 your Honor, lines 23.

4 THE COURT: Page number again, please?

5 MR. FROCCARO: Page 715 to 716, Judge.

6 THE COURT: Okay.

7 MR. FROCCARO: Line 23 to 15.

8 Q Mr. Fatato, I will ask you to review this document
9 and see if it refreshes your recollection that you made a
10 prior statement under oath admitting that during one of
11 your first interviews with the FBI in 1994, you told them
12 that you only met with Chris Tarantino two or three times.

13 (Handed to the witness.)

14 Q Does that refresh your recollection that you made a
15 prior statement under oath?

16 A Yes.

17 Q Yes?

18 A Yes.

19 Q Were you being truthful when you made that statement?

20 A Yes.

21 Q Has the government ever asked you to provide them
22 with a photo of you, Louis Dorval and Chris Tarantino
23 together? There are none, correct?

24 A Right.

25 Q Has law enforcement ever asked you to look at a

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1 surveillance photo where you, Louis Dorval and Chris
2 Tarantino were ever seen together? Never, right?

3 A No, sir.

4 Q During your first interview with the FBI in 1994, you
5 didn't even know Chris' last name, isn't that so,
6 Mr. Fatato?

7 A Correct.

8 Q Now, you know what the term "associate" means in the
9 context of a criminal case, don't you, Mr. Fatato?

10 A Yes.

11 Q And your understanding of what the term associate
12 means in the context of a criminal case is a partner in
13 crime; is that right?

14 A Yes.

15 Q And when you commit crimes together you are
16 considered associates; is that correct?

17 A Yes.

18 Q And you would describe yourself as an associate of
19 Louis Dorval when he was alive; is that correct?

20 A Yes.

21 Q And you also claim you were an associate of Chris
22 Tarantino before you became a cooperating witness for our
23 government in the year 1994, that is your sworn testimony
24 at least here today; right, Mr. Fatato?

25 A Yes, I would say.

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1 Q Have you ever made a prior statement under oath that
2 you were never an associate of Mr. Tarantino's, yes or no,
3 Mr. Fatato?

4 A I don't recall.

5 Q Okay.

6 3500-GF-144.

7 MR. FROCCARO: Your Honor, pages 1718 to 1719.

8 It is lines 12 to 13, beginning line 12 on
9 1718 -- 718, your Honor.

10 THE COURT: Thank you.

11 Q I'm asking you to see if it refreshes your
12 recollection that you had made that prior statement under
13 oath, Mr. Fatato.

14 (Whereupon, at this time there was a pause in
15 the proceedings.)

16 Q After reviewing this, does it refresh your
17 recollection that you made that prior statement under
18 oath?

19 A Yes.

20 Q Were you being truthful when you made that statement?

21 A No. I was in the grand jury, and I --

22 Q You were in the grand jury investigating the murders
23 of Julius Baumgardt and Louis Dorval, and you are saying
24 you lied about that?

25 A I lied about my personal involvement.

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1 Q You are saying you lied about that to a grand jury
2 investigating those two murders?

3 A I lied nothing about the murders. I lied about my
4 involvement in drug dealing and motivation, and some
5 security bonds.

6 Q Did you lie to the grand jury investigating those two
7 murders about that, what we just talked about?

8 A Yes, being an associate because --

9 Q That's all.

10 You just happened to know Mr. Tarantino through
11 Mr. Dorval; isn't that true, sir?

12 A Yes.

13 Q And the information you now claim to have had about
14 the armored car robbery, you claim to have learned from
15 conversations you allegedly had with Mr. Dorval; is that
16 right?

17 A Yes, sir.

18 Q And you claim that at some point during your
19 friendship with Louis, you recall telling him -- excuse
20 me, you recall him telling you that he, Chris and Scot and
21 a couple of other guys were planning to do an armored car
22 robbery in Muttontown; is that right?

23 A Surveillance, yes.

24 Q That story is quite different from what you told the
25 Nassau County District Attorney's Office while you were

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1 cooperating with them in September of 1996; is that
2 correct?

3 A Yes.

4 Q While you were a cooperating witness for the Nassau
5 County District Attorney's Office, didn't you tell them
6 before the armored car robbery Louis Dorval never told you
7 who the guys were that he planned on doing it with, yes or
8 no, sir?

9 A I didn't know the other two guys from surveillance is
10 what I meant.

11 Q The answer is: Did you ever make a statement that
12 you swore what you were saying was the truth and that you
13 were lying and that you could be charged with a crime for
14 making a false statement, that Louis Dorval never told you
15 who he planned on doing it before the robbery, yes or no,
16 sir?

17 A It was a statement --

18 Q It is a yes or no.

19 A It is a confusing statement, because he wrote it down
20 wrong and --

21 Q You say he wrote it down wrong, sir?

22 A I didn't know the other guys pertaining to the
23 armored car robbery.

24 MR. FROCCARO: May I approach, Judge?

25 THE COURT: Yes.

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1 Q First of all, the statement we are talking about is a
2 statement you signed; is that correct?

3 A Yes. I know the statement you are talking about.

4 Q It is a statement -- it says, I understand that any
5 false statements made herein are punishable as a class A
6 misdemeanor pursuant to Section 210.45 of the Penal Law of
7 New York State. Do you recall that, sir?

8 A Yes.

9 Q And you also recall saying that you read the
10 statement that Detective Daly has witnessed before me, I
11 signed it, and he has also read it to me? You recall that
12 as well?

13 A Yes.

14 Q Okay.

15 In that signed statement, didn't you tell the
16 Nassau County District Attorney's Office that sometime in
17 April or May 1994, a friend of mine named Louis Dorval
18 told me that he and a couple of his friends were going to
19 do an armored car robbery in Muttontown? Louis never told
20 me who the two guys were that were going to do it with
21 him.

22 Did you say that? Yes or no. Please review it.

23 A Yes. I read that, sir.

24 Q And that refreshes your recollection that that is
25 what you said to the Nassau County District Attorney's

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1 Office then; is that correct?

2 A Yes, two. But there was four.

3 Q This says two.

4 A I know.

5 Q That is what you said then, sir.

6 And that was a true statement when you made it,
7 right?

8 A Yes, if you read the whole thing.

9 Q And you now claim that Chris Tarantino was involved
10 in certain drug transactions with you after the armored
11 car robbery took place; is that right?

12 A Correct.

13 Q Involving cocaine and marijuana, right?

14 A Correct.

15 Q Which we discussed before, for the first time that
16 you ever made that allegation was ten years after you
17 initially became a cooperating witness; is that right?

18 A Yes. I minimized my role.

19 Q And the answer is yes, sir?

20 A Yes.

21 Q Just a few more questions on the same subject, okay,
22 Mr. Fatato?

23 A Yes.

24 Q When you were a cooperating witness for the
25 government, the first time around, didn't you also tell

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1 them that Chris had nothing to do with drugs, yes or no,
2 sir?

3 A Yes.

4 Q You now claim, however, a couple of days after the
5 armored car robbery, Louis Dorval contacted you and asked
6 you if you can get him some marijuana; is that right?

7 A Yes.

8 Q And he came with fresh 20 dollar bills; is that
9 correct?

10 A Yes.

11 Q The first time you made that claim was ten years
12 after you became a cooperating witness; is that right?

13 A Yes.

14 Q And you were trying to secure a second cooperation
15 agreement with the government to avoid a life sentence; is
16 that right?

17 A Correct.

18 Q You testified during your direct examination that you
19 and Mr. Dorval purchased a 15 kilo shipment of cocaine
20 together shortly before his disappearance in the year
21 1994; is that correct?

22 A Yes.

23 Q From this person Hugo, correct?

24 A Yes.

25 Q On credit, right?

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1 A On credit, and I had a balance of some money owed.

2 Q Wait a minute. You owed him more money you mean?

3 A It was credit, and then I owed, I think, 20 or 30 or
4 40 thousand dollars from previous drugs I purchased.

5 Q You told the jury you got the 15 kilos on credit; is
6 that right?

7 A Yes.

8 Q And you owed additional money?

9 A Yes.

10 Q And that story is different from the story you told
11 the FBI when you first became a cooperating witness back
12 in 1994, isn't it, Mr. Fatato?

13 A Yes, it is.

14 Q Now, when you were initially interviewed by the FBI
15 in 1994, you told them that you had lent Mr. Dorval 50,000
16 to enable Mr. Dorval to purchase this shipment of cocaine
17 alone or by himself; is that right?

18 A Yes. I minimized my role, correct.

19 MR. FROCCARO: Judge, I think he just can answer
20 the question.

21 THE COURT: You can answer it yes or no.

22 THE WITNESS: Okay.

23 Q The answer is yes, right?

24 A Yes.

25 THE COURT: Mr. Froccaro, let's take our

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1 luncheon recess.

2 I will see you folks back here 1:45, if that is
3 okay.

4 Don't talk about the case.

5 (Whereupon, at this time the jury leaves the
6 courtroom.)

7 (Luncheon Recess.)

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1 A F T E R N O O N S E S S I O N

2

3 THE COURT: We will bring in Mr. Tarantino and
4 also Mr. Fatato, if you would. And let's get the jury
5 lined up.

6 MR. FROCCARO: Your Honor, with your permission,
7 can Mr. Rapaport read back the last question, and if he
8 can, can he read a couple of them?

9 THE COURT: Yes.

10 MR. FROCCARO: When the jury comes in.

11 THE COURT: Yes.

12 (Whereupon, the jury at this time entered the
13 courtroom.)

14 (The witness Gaetano Fatato resumes the witness
15 stand.)

16 THE COURT: Please be seated.

17 We are ready to resume.

18 MR. FROCCARO: With your permission, your Honor,
19 I would ask if we can read back a few of the questions so
20 I can remember and the jury can remember.

21 THE COURT: Harry, if you would be good enough
22 to do that, thank you.

23 (Whereupon, the court reporter reads the
24 requested material.)

25

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1 CROSS-EXAMINATION (cont'd)

2 BY MR. FROCCARO:

3 Q And Mr. Fatato, that was a lie, too; is that correct?

4 A Can you rephrase that?

5 Q I will read the question again.

6 MR. FROCCARO: Judge, I will take him back
7 quickly, I promise to refresh his recollection to where we
8 are, if it is all right, with your permission?

9 THE COURT: Yes.

10 Q Mr. Fatato, you testified during the direct
11 examination that you and Mr. Dorval purchased a 15 kilo
12 shipment of cocaine together shortly before his
13 disappearance in the year 1994; is that correct?

14 A Yes.

15 Q From this person Hugo; is that correct?

16 A Yes.

17 Q On credit, correct?

18 A Yes.

19 Q Now, that story is different from the story you told
20 the FBI when you first became a cooperating witness back
21 in 1994; is that correct?

22 A Yes.

23 Q When you were initially interviewed by the FBI in
24 1994, you told them that you had lent Mr. Dorval \$50,000
25 to enable him to purchase the shipment of cocaine alone or

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1 by himself, correct?

2 A Correct.

3 Q Now you claim that was a lie, too, correct?

4 A Yes.

5 Q And today you give the version of the story that you
6 purchased the shipment of cocaine along with Mr. Dorval
7 that you were partner; is that correct?

8 A Yes.

9 Q And you also told the FBI back in 1994 that you did
10 not know who had supplied this shipment of cocaine; is
11 that correct?

12 A Correct.

13 Q Another lie, right?

14 A Correct.

15 Q You knew who the supplier was, right?

16 A Yes.

17 Q Mr. Fatato, I will ask you some questions now about
18 the events surrounding the murder of Louis Dorval, okay?

19 A Okay.

20 Q You now claim your last contact with Mr. Dorval while
21 he was alive was a phone call you received from him on
22 Friday, August 12th, while you were on Fire Island; is
23 that correct?

24 A Correct.

25 Q And about what time of the day do you claim to have

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1 had this phone call with Mr. Dorval?

2 A From what I recall, around lunchtime.

3 Q Early afternoon?

4 A Yes.

5 Q You claim during this phone call, you claim you heard
6 Chris Tarantino in the background, and Louis said to you,
7 I don't think it is safe there, meaning for you on Fire
8 Island, I got a boat, I'll come and pick you up.

9 Is that what you are claiming today?

10 A Yes.

11 Q And do you know where Louis was when he -- when you
12 claim he called you?

13 A No.

14 Q Since you began cooperating with the government in
15 1994, would you agree that you have provided the
16 government with different versions of what you claim
17 occurred during your last telephone conversation with
18 Mr. Dorval? Yes or no.

19 A Yes.

20 Q Do you recall telling the FBI during one of your
21 first interviews on September 13th, 1994 that when you
22 last spoke to Mr. Dorval by telephone, he was at his
23 residence in Queens and was not with Chris at the time?
24 Do you recall saying that to the FBI about a month after
25 Mr. Dorval died? Yes or no, sir.

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1 A I don't recall.

2 Q Well, have you ever made a prior statement under oath
3 admitting that during an interview with the FBI on
4 September 13th, 1994, that you told the FBI that the last
5 time you spoke with Mr. Dorval, he was at his residence
6 and he was going to visit Chris later that evening, yes or
7 no, sir?

8 A I do not recall.

9 MR. FROCCARO: Lines 14 to 24, your Honor, page
10 741, GF-134.

11 Q Mr. Fatato, I will ask you to view this document and
12 see if it refreshes your recollection that you previously
13 admitted under oath that on September 13th, 1994, that you
14 indicated to a Special Agent of the FBI, Raymond Greco,
15 that the last time you spoke to Mr. Dorval was at his
16 residence and that he was going to visit Chris later that
17 evening?

18 (Handed to the witness.)

19 Q The answer is after reviewing it, it refreshes your
20 recollection that you made a prior statement under oath
21 that you told that to Agent Greco; is that correct?

22 A It says reflecting back to a pink --

23 MR. FROCCARO: I will just read it, if it is all
24 right.

25 THE COURT: Yes.

Fatato-Cross/Froccaro

1337

1 Q Mr. Fatato, do you recall being asked this question
2 and giving this answer under oath at a prior proceeding:

3 Question: I'm asking you to review this
4 document, see if it refreshes your recollection that on
5 September 13th, 1994, you indicated to
6 Special Agent Raymond Greco that the last time you spoke
7 to Mr. Dorval was at his residence, and that he was going
8 to visit Chris later that evening, it is the pink stuff,
9 all the pink stuff. That is what you said to him, right?

10 Answer: Yes.

11 Do you recall being asked that question and
12 giving that answer under oath at a prior proceeding, sir?

13 A Yes, but --

14 Q And you were being truthful when you gave that
15 answer?

16 A Yes.

17 Q And that interview was less than a month after
18 Mr. Dorval's death; is that correct?

19 A I don't recall exactly the date --

20 Q If I tell you the interview was around
21 September 13th, 1994, that is about a month after
22 Mr. Dorval's death; is that right?

23 A Yes.

24 Q Mr. Fatato, moving on to another subject.

25 You wound up, I think you testified, serving a

Fatato-Cross/Froccaro

1338

1 total of 51 months in prison for the racketeering case in
2 New Jersey, the stolen bonds case in White Plains, New
3 York, and the cocaine trafficking case in Nassau County.

4 You agree?

5 A Yes.

6 Q From approximately I believe 1995 to November of
7 1999; is that correct?

8 A Correct.

9 Q And after you were released from prison as a
10 cooperating witness, you were rehabilitated and led a
11 law-abiding life; is that accurate to say, Mr. Fatato?

12 A No.

13 Q After you were released from prison, you were placed
14 on supervised release by a judge; is that correct?

15 A Yes.

16 Q And for a period of three years from your release
17 from prison in November of 1999; is that correct?

18 A Yes.

19 Q And you were specifically ordered by the Court not to
20 commit another federal, state or local crime while you
21 were on supervised release, you agree?

22 A Yes.

23 Q And you were specifically ordered by the Court not to
24 illegally possess an unlawful substance; is that correct?

25 A Yes.

Fatato-Cross/Froccaro

1339

1 Q And you were disobeying the Court and committed new
2 crimes while you were on supervised release, yes?

3 A Yes.

4 Q And you disobeyed the Court's order and illegally
5 possessed controlled substances while on supervised
6 release as well; is that correct?

7 A Yes.

8 Q You were also ordered by the Court to truthfully
9 answer all inquiries by the probation officer who was
10 responsible for supervising you while you were on
11 supervised release in our community; is that correct?

12 A Correct.

13 Q And you were ordered to submit truthful and complete
14 monthly reports to your probation officer each month; is
15 that correct?

16 A Yes.

17 Q And in the 36 months that you were on supervised
18 release, how many times did you see your probation officer
19 in person?

20 A Once a month.

21 Q Okay.

22 Did you always truthfully answer every question
23 that your probation officer asked you while you were on
24 supervised release, sir?

25 A Yes.

Fatato-Cross/Froccaro

1340

1 Q You truthfully answered every question?

2 A I tried truthfully, yes.

3 Q Well, have you ever made a statement under oath that
4 you did not answer the questions from the probation
5 officer truthfully while you were on supervised release?

6 A Yes.

7 The last year of my supervised release I
8 started --

9 Q I'm asking you, you were being interviewed by your
10 probation officer once a month, correct?

11 A Yes.

12 Q And when you went in there, the probation officer
13 would ask you questions, and I'm asking you, you lied to
14 her in response to those questions, didn't you?

15 A Yes.

16 Q During the 36 months you were on supervised release,
17 did you always submit truthful and accurate reports to
18 your probation officer each month about your finances; yes
19 or no?

20 A No.

21 Q And you lied on your monthly reports; is that right?

22 A Yes.

23 Q And you were aware, were you not, at the time that
24 there was a printed warning right on the report itself
25 that said if you made any false statements, it was a crime

Fatato-Cross/Froccaro

1341

1 punishable by up to five years in prison, you knew that,
2 right?

3 A Yes.

4 Q And notwithstanding that warning, you lied on the
5 monthly reports anyway and made false statements, right,
6 Mr. Fatato?

7 A Yes.

8 Q While you were being supervised by a United States
9 probation officer pursuant to the Court's order, you were
10 providing protection to a local drug dealer; is that
11 right?

12 A Yes.

13 Q And would you describe yourself as a violent person,
14 Mr. Fatato, yes or no?

15 A Yes, at times.

16 Q The answer to that question is yes?

17 A Yes, at times.

18 Q And were you someone who was capable of visiting
19 serious physical injury upon another human being, yes or
20 no, sir?

21 A Yes.

22 Q What kind of money did the local drug dealer pay you
23 to protect him while you were on a court order for
24 supervised release?

25 A Between five and ten thousand dollars a month.

Fatato-Cross/Froccaro

1342

1 Q While you were on court ordered supervised release,
2 you also distributed a drug called ketamine; is that
3 correct?

4 A Yes, that is what it was.

5 Q And ketamine is what, a horse tranquilizer?

6 A Yes, that is what it is.

7 Q Clearly a very illegal narcotic substance, yes?

8 A Yes.

9 Q You distributed ketamine in large quantities, as much
10 as 10,000 bottles a week, right?

11 A No, sir.

12 Q Have you ever made a prior statement under oath that
13 you distributed ketamine in large quantities, as much as
14 10,000 bottles a week, sir?

15 A No. It was 10,000 bottles in total.

16 Q Answer my question. If you don't understand it, I
17 will try to rephrase it.

18 Have you ever made a prior false statement under
19 oath where you swore to tell the truth, nothing but the
20 truth, that you distributed ketamine in large quantities,
21 as much as 10,000 bottles a week, yes or no?

22 A I don't recall.

23 MR. FROCCARO: Judge, 3500 GF-144 at page 741,
24 lines 10 to 22.

25 I apologize, your Honor, it is page 744, lines

Fatato-Cross/Froccaro

1343

1 744 -- lines 7 through 11 -- excuse me, 12 -- 7 through
2 20.

3 I will get it sooner or later, Judge.

4 THE COURT: 7 through 20 it is.

5 Q I will ask you to review that, Mr. Fatato, and see if
6 you made a prior statement under oath that you would
7 distribute this horse tranquilizer in quantities as much
8 as 10,000 bottles a week.

9 (Handed to the witness.)

10 THE COURT: Let's not have conversations back
11 there.

12 Q After reviewing that, does it refresh your
13 recollection that you made that prior statement under
14 oath?

15 A I clarified my prior statement under oath. It was
16 10,000 bottles over --

17 MR. FROCCARO: Judge --

18 THE COURT: Sir, you will have an opportunity
19 later when the government asks you certain questions.

20 Answer the question if you can. Incorporate in
21 your answer, did you make the statement with the portion
22 shown to you, that you distributed 10,000 bottles a week?

23 Q Do you recall?

24 A I recall, but --

25 Q It is yes or no, Mr. Fatato.

Fatato-Cross/Froccaro

1344

1 A Yes. I recall.

2 Q And were you being truthful when you made that
3 statement, sir?

4 A Yes.

5 Q And so I'm sure I was clear on it, and Mr. Rosen told
6 me I may not have, it is not something that you give a
7 horse tranquilizer to a horse, it is something you give to
8 people, right?

9 A It is a dog and cat tranquilizer.

10 Q It is not a horse?

11 A It is dog and cat.

12 Q While on supervised release, you were also arrested
13 by the Nassau County Police Department for falsely
14 reporting a crime to the police; is that correct?

15 A Yes.

16 Q You filed a report with the Nassau County Police
17 Department stating that your car, a Mercedes Benz 500 SL
18 convertible, I believe it was, had been hit by another car
19 and the driver fled the scene; is that correct?

20 A Yes.

21 Q All a lie?

22 A Yes.

23 Q In truth, your Mercedes Benz 500 SL convertible had
24 not been hit by another car driving by; is that correct?

25 A Yes.

Fatato-Cross/Froccaro

1345

1 Q A friend of yours smashed it up?

2 A Yes.

3 Q And you actually called the cops up to lie to them
4 about what happened; is that correct?

5 A Yes.

6 Q And you did this to perpetrate a fraud on your
7 insurance carrier; is that right?

8 A Yes.

9 Q After you got out of prison in the year 1999, and on
10 court ordered federal supervised release which you
11 violated, were you ever a confidential informant for the
12 Nassau County District Attorney's Office?

13 A Yes.

14 Q And in connection with what investigation were you a
15 confidential informant?

16 A When they asked me some questions. I don't recall
17 exactly what questions.

18 Q You have no recollection as you sit here today about
19 what questions or why you were a confidential informant
20 for the Nassau County District Attorney's Office?

21 A No, sir.

22 Q You don't remember anything that the authorities in
23 the Nassau County District Attorney's Office said to you
24 while you were working for them as a confidential
25 informant?

Fatato-Cross/Froccaro

1346

1 A They wanted to ask me some questions, and I don't
2 recall what was said.

3 Q Well, do you recall how long you were working for the
4 Nassau County District Attorney's Office as a confidential
5 informant?

6 A No, sir.

7 Q You know what a Rule 35 is, don't you?

8 A Yes.

9 Q And a Rule 35 is if you provide substantial
10 information or cooperation to law enforcement after you
11 are sentenced, you can file under Rule 35; is that
12 correct?

13 A Yes.

14 Q A Rule 35 is a motion which you understand allows a
15 Court to reduce a person's actual prison sentence; is that
16 right?

17 A Yes.

18 Q And it is like after you get sentenced, you can file
19 a Rule 35; is that right?

20 A Yes, sir.

21 Q And before you can have the 5K1 for a better
22 sentence, right?

23 A Yes.

24 Q You know a man by the name of Bill Peterson, don't
25 you?

Fatato-Cross/Froccaro

1347

1 A Yes.

2 Q Bill Peterson was a friend of yours who had gotten
3 himself in trouble with the law; is that correct?

4 A Yes.

5 Q He got convicted after a trial of a crime of arson
6 and was facing an eight-year prison sentence; is that
7 correct?

8 A Correct.

9 Q What did he burn down?

10 A I believe he was in the liquor business.

11 Q I didn't hear what you said.

12 A He was in the liquor business, a competitor's store.

13 Q He burned down what?

14 A He started a fire at a competitor's liquor store.

15 Q He burned down a competitor's liquor store?

16 A Yes.

17 Q Somewhat kind of community?

18 A I don't recall.

19 Q Was it residential, mixed?

20 A I don't recall.

21 Q Did you ask him?

22 A No.

23 Q Before he came over to your house?

24 A No. He was convicted and went to trial and was
25 convicted prior to me talking to him.

Fatato-Cross/Froccaro

1348

1 Q He came by your house and he asked you how he can get
2 out from under that eight-year prison sentence; is that
3 correct?

4 A Correct.

5 Q And you told him that he would probably need a
6 Rule 35, which would mean cooperation with the government;
7 is that correct?

8 A Correct.

9 Q Or \$50,000 in cash; is that right?

10 A No.

11 Q At that point you moved into a new home in Dix Hills
12 with your wife, and Peterson came to the house and asked
13 you if you can help him out; is that right?

14 A Yes.

15 Q What is your understanding about why Mr. Peterson
16 chose you for a solution to this particular problem?

17 A Knowing I was in prison prior, and he came to me, him
18 never being in prison, and asked me some questions.

19 Q Mr. Peterson told you if you helped him to get a
20 reduced sentence, he would make you a partner in a
21 pornography business in Deer Park; is that correct?

22 A Yes.

23 Q And you agreed to help him; is that right?

24 A Yes.

25 Q You believe that if you, yourself, was able to

Fatato-Cross/Froccaro

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1 provide assistance to law enforcement in the prosecution
2 of another human being, you might be able to get
3 Mr. Peterson, this arsonist, his sentence reduced; is that
4 right?

5 A Yes.

6 Q A sort of like a third-party cooperation agreement,
7 right?

8 A Yes.

9 Q So you went out and committed a very serious
10 narcotics felony in an attempt to get Mr. Peterson's
11 sentence reduced and you had a stake in the narcotics
12 business; is that correct?

13 A Yes.

14 Q What you were trying to do is to manipulate the
15 system to get Mr. Peterson out of jail; isn't that true?

16 A Tried to help out a friend.

17 Q Have you ever made a statement under oath that you
18 were -- what you were trying to do is to make --
19 manipulate the system to get Mr. Peterson out of jail, yes
20 or no?

21 A Yes.

22 Q Were you being truthful with respect to that?

23 A Yes.

24 Q Your plan was to purchase crystal meth; is that
25 correct?

Fatato-Cross/Froccaro

1350

1 A Yes.

2 Q And would you please explain to the jury, what is
3 crystal meth?

4 A Umm, crystal meth, it is a drug.

5 Q Another illegal narcotic?

6 A Yes.

7 Q And your plan was to purchase the crystal meth and
8 contact the police, according to you, contact law
9 enforcement that you had information about a crystal meth
10 trafficker; is that correct?

11 A Yes.

12 Q Let me ask you a question: Why didn't you just
13 contact law enforcement and give them information about
14 you and your co-conspirators in the ketamine distribution
15 ring, sir?

16 A That dried up. It was no longer --

17 Q It dried up, sir, meaning how long before you came up
18 with this third-party arrangement to buy crystal meth, how
19 long before did it dry up?

20 A About eight months.

21 Q So the statute of limitations on those crimes didn't
22 run, do you understand?

23 A I wasn't thinking that way, statute of limitations.

24 Q You weren't thinking about pointing the finger at
25 yourself and your friend in the ketamine transactions,

Fatato-Cross/Froccaro

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1 correct?

2 A Yes.

3 Q And your third-party cooperation attempt didn't work
4 out as you planned; is that right?

5 A Yes.

6 Q And what you were trying to set up was cooperating
7 yourself, and you wound up getting arrested by the DEA in
8 dealing crystal meth; is that correct?

9 A Yes.

10 Q You immediately began to cooperate because you knew
11 from prior experience that if you got locked up, this was
12 the way to reduce your exposure to jail; is that right?

13 A Yes.

14 Q You believe it is your obligation now to assist law
15 enforcement in any assistance necessary; is that correct?

16 A Correct.

17 Q Mr. Fatato, you signed your most recent cooperation
18 agreement with the government in April of 2004; is that
19 correct, sir?

20 A Yes, sir.

21 Q And after you signed that agreement, did you get
22 arrested?

23 A Yes.

24 Q And you were charged with -- do you want something to
25 drink, sorry?

Fatato-Cross/Froccaro

1352

1 A I spilled some of the water.

2 THE COURT: We have some paper here -- maybe we
3 don't. We were cut back.

4 (Whereupon, at this time there was a pause in
5 the proceedings.)

6 THE COURT: You can continue.

7 THE WITNESS: Sorry.

8 Q Mr. Fatato, after you signed your most recent
9 cooperation agreement, did you get arrested?

10 A Umm, yes.

11 Q And you were charged with threatening a woman, right?

12 A Yes.

13 Q A woman named Susan Schall, whom you were hanging out
14 with, so to speak?

15 A Yes.

16 Q And you were having an affair with her while you were
17 married?

18 A Yes.

19 Q And Ms. Schall and an eyewitness told the police that
20 you threatened her and told her that she had better go to
21 Florida because that's the only place she would be safe,
22 you know that, Mr. Fatato, don't you?

23 A Yes.

24 Q Did the Court grant Ms. Schall an order of protection
25 from you while you were a cooperating witness for the

Fatato-Cross/Froccaro

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1 government?

2 A Yes.

3 Q And the government knows that?

4 A Yes.

5 Q Since you began your second stint as a cooperating
6 witness for the government, have you committed any crimes
7 that the government is aware of, at least, yes or no, sir?

8 A No.

9 Q Well, you were a convicted felon before you signed
10 the most recent cooperation agreement, do you agree?

11 A Yes.

12 Q And you know that possession of a firearm by a felon
13 is a federal crime, correct?

14 A Yes.

15 Q Did you keep a rifle and shotgun in your house after
16 you signed your most recent cooperation agreement, yes or
17 no, Mr. Fatato?

18 A Yes. My wife purchased it, yes.

19 Q You kept a shotgun and a rifle in your house after
20 you signed the agreement, correct?

21 A Correct.

22 Q A serious federal crime, would you agree?

23 A Umm, I don't know.

24 Q You have no idea what the penalty is for carrying a
25 gun --

Fatato-Cross/Froccaro

1354

1 A A licensed registered shotgun. A gun is not supposed
2 to be in the house. It is a serious crime, yes.

3 Q Well, you previously testified that it was your
4 understanding that if you committed any new crimes, the
5 cooperation agreement you have would be ripped up.

6 Did the government rip it up after they found
7 out you had a shotgun or rifle in your house?

8 A No.

9 Q No, right?

10 Did they charge you with the crimes you had
11 committed while you were their cooperating witness,
12 namely, being a felon in possession of firearms? No,
13 right?

14 A No.

15 Q And did they ask that your bail be revoked and you
16 thrown in jail? No, right?

17 A No.

18 Q And did you give a judge your word if you were
19 released on bail, you wouldn't commit any crime, including
20 possession of firearm? Yes or no, Mr. Fatato.

21 A Yes.

22 Q And you lied to the judge, right?

23 A Not intentionally.

24 Q Sorry?

25 A Not intentionally.

Fatato-Cross/Froccaro

1355

1 Q You didn't intentionally possess a shotgun and rifle
2 in your own house?

3 MS. CAPWELL: Objection.

4 THE COURT: Sustained.

5 MR. FROCCARO: Okay, your Honor.

6 Q Does anyone from the government ever check up to see
7 what you are up to, Mr. Fatato?

8 A Yes.

9 Q And since you became a cooperating witness a second
10 time, how many times has the government come and searched
11 the home you live in for drugs and weapons? Never, right?

12 A Correct.

13 Q Since you signed the most recent cooperation
14 agreement, had you filed any false tax returns, yes or no,
15 Mr. Fatato?

16 A Umm, yes.

17 Q Another crime, right? False tax returns, filing a
18 false tax return is a crime, isn't it, Mr. Fatato?

19 A It's a crime, yes.

20 Q Has the government charged you with filing a false
21 tax return since you became their cooperating witness
22 again?

23 A No, sir.

24 Q Had they ripped up your agreement since you committed
25 another crime at least that they know of again?

Fatato-Cross/Froccaro

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1 A No, sir.

2 Q Had you ever made a prior statement under oath that
3 since you signed your most recent cooperation agreement,
4 you never filed any false tax returns? Yes or no,
5 Mr. Fatato?

6 A I don't recall.

7 Q 3500-GF-144, your Honor, at page 757.

8 MR. FROCCARO: May I approach, your Honor?

9 THE COURT: Yes.

10 MR. FROCCARO: Thank you.

11 (Counsel approaches the witness stand.)

12 Q Mr. Fatato, see if this refreshes your recollection
13 that you previously made a false statement under oath that
14 you never filed a false tax return.

15 Does it refresh your recollection that you made
16 a statement under oath that you never filed a false tax
17 return?

18 A Yes. It wasn't false.

19 Q Mr. Fatato, does it refresh your recollection that
20 under oath --

21 A Yes, yes.

22 Q Were you being truthful when you said that?

23 A Yes.

24 Q I just have a few more questions, Mr. Fatato.

25 You testified at some length yesterday about fur

Fatato-Cross/Froccaro

1357

1 coats stolen from Filene's Basement; is that correct?

2 A Yes.

3 Q And you claim during your direct examination that
4 Louis Dorval told you that Mr. Tarantino participated in
5 the burglary at the Filene's Basement more than 17 years
6 ago; is that correct?

7 A Yes.

8 Q Mr. Fatato, you got caught red-handed in possession
9 of selling fur coats from Filene's Basement by the FBI; is
10 that correct?

11 A Yes.

12 Q You got caught selling to a man named Richard Sabol,
13 who unbeknownst to you was working for the FBI as an
14 informant at that time; is that correct?

15 A Yes.

16 Q And Mr. Sabol was tape recording his conversation
17 with you under the watchful eye of the FBI; is that right?

18 A Yes.

19 Q And I believe the government --

20 MR. FROCCARO: One second, your Honor.

21 Q We were all given these books yesterday?

22 A Yes.

23 Q With a lot of pages in them?

24 A Yes.

25 Q And transcripts you reviewed and some were accurate;

Fatato-Cross/Froccaro

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1 is that correct?

2 A Yes.

3 Q Can you tell me, you also looked at the tape
4 recordings in making your assessment, and you said the
5 transcripts were accurate; is that right?

6 A Yes.

7 Q Right?

8 A Yes.

9 Q All right.

10 Let me ask you, Chris Tarantino is never
11 overheard on any of these tapes; is that correct?

12 A Yes.

13 Q And there are a lot of other tapes that Mr. Sabol
14 made that weren't played, right?

15 A Oh, yes.

16 Q Okay.

17 And Chris' name is never mentioned on any of
18 the -- these recordings; is that right?

19 A Yes.

20 Q When Louis Dorval mentioned he had a friend who just
21 got out of Leavenworth, that had nothing to do with any
22 discussion about stolen coats between you, Dorval and
23 Mr. Sabol; is that right?

24 A Yes.

25 Q The FBI even took photographs with a meeting that

Fatato-Cross/Froccaro

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1 they had with their informant, Mr. Sabol, that was seen --
2 where you were seen with the stolen fur coats in your
3 possession; is that right?

4 A Yes.

5 (At this time a document was exhibited on
6 courtroom screen.)

7 Q This is Government's Exhibit GF-6, can you tell me
8 what is in the big bag?

9 A The fur jackets.

10 Q And the heavy guy on the right, everybody's right,
11 that is you, correct?

12 A Yes.

13 Q Who is the fellow on the left?

14 A Richie Sabol.

15 Q I will go over all three of them just quickly.

16 And this fellow again is you, right?

17 A Yes.

18 Q With the fur coats in your hand, right?

19 A Yes.

20 Q And who is this fellow?

21 A Richie Sabol.

22 Q Okay.

23 Here again, that is you, right?

24 A Yes.

25 Q And that is, I can figure it out, Richie Sabol?

Fatato-Cross/Froccaro

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1 A Yes.

2 Q And that is Louis Dorval here?

3 A Yes.

4 Q And can you tell me, are there any pictures of Chris
5 Tarantino here?

6 A No.

7 Q Chris wasn't there, right?

8 A Yes.

9 Q Never seen him, right?

10 A Nope.

11 Q Everything you testified about with respect to
12 Filene's Basement you claim was told to you by Louis
13 Dorval; is that correct?

14 A Yes.

15 Q So Chris' isn't overheard, Chris' name is not
16 mentioned, Chris is not seen, correct?

17 A Correct.

18 Q And finally, to make sure I understand the facts
19 correctly, you got arrested in 1994 for possessing and
20 selling these fur coats, right?

21 A Yes.

22 Q And not Mr. Tarantino, right?

23 A Yes.

24 MR. FROCCARO: Judge, I think I'm done for now,
25 your Honor.